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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

SIMONE AKERMAN,

Petitioner,

vs.

BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, HUNTER COLLEGE OF THE CITY UNIVERSITY OF NEW YORK, and JACQUELINE WEXLER,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SIMONE AKERMAN
Petitioner (Pro Se)
61-45 98th Street
Rego Park, New York 11374
(718) 592-6743

IN THE
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BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, HUNTER COLLEGE OF THE CITY UNIVERSITY OF NEW YORK, AND JACQUELINE WEXLER,

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QUESTIONS PRESENTED FOR REVIEW

1. Did the respondents violate petitioner's rights of freedom of speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution and protected by Section 1983 of the United States Code, Volume 42, when they denied her reappointment with tenure at Hunter College of the City University of New York?

2. Did the Court of Appeals err when it affirmed the District Court's dismissal of petitioner's suit under Section 1983 of the United States Code, Volume 42, on the ground that it was legally bound to give binding effect to the decision of the labor arbitrator in the collective bargaining grievance which preceded this action?

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The petitioner, Simone Akerman, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on October 17, 1984.

OPINIONS BELOW

The Court of Appeals entered its decision affirming the dismissal of petitioner's suit on October 17, 1984. A copy of the decision is attached as Appendix A1-5.

The Court denied petitioner's petition for rehearing and suggestion for rehearing en banc on March 5, 1985. A copy of the order is attached as Appendix A6-7.

JURISDICTION

On October 17, 1984 the Court of Appeals denied petitioner's appeal to reverse the decision of the Federal District Court for the Southern District of New York which dismissed petitioner's action brought under Title 42, United States Code, Section 1983. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I:

> "Congress shall make no law...abridging the freedom of speech..."

United States Constitution, Amendment XIV:

"No State shall...deprive any person of life, liberty, or property without due process of law..."

42 United States Code, Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

STATEMENT OF THE CASE

Dr. Simone Akerman was employed as an Instructor in the Romance Language Department of Hunter College of the City University of New York under a series of one-year contracts between September 1, 1973 and August 31, 1979. In 1978, at the conclusion of her fifth year as an Instructor, petitioner was first considered for tenure.[1] Defendants denied her tenure and a labor grievance was filed against the College. A settlement agreement was reached in the summer of 1978 which provided that petitioner would be rehired for an additional year, without tenure, and

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1 Under the collective bargaining agreement for faculty members at the City University of New York, Instructors are eligible for tenure in the form of a certificate of continuous employment ("C.C.E.") after five years of service in that rank.

would be subject to a reevaluation of her qualifications for a permanent appointment at Hunter College. By accepting the settlement agreement the College and University acknowledged the existence of a pattern of wrongs to which Dr. Akerman had been subjected during the first five years of her employment.

Petitioner was again denied reappointment with tenure in the Spring of 1979 and a second labor grievance was filed. The case eventually was taken to arbitration and on September 17, 1982 the arbitrator denied Dr. Akerman's grievance.

Petitioner served a summons and complaint on the defendants on May 14, 1980, May 28, 1980, and April 26, 1980, respectively. In the complaint petitioner alleged violations of her rights under the First and Fourteenth

Amendments to the United States Constitution and under 42 U.S.C. §1983. Defendants answered the complaint in a timely fashion and on June 27, 1980 moved pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for an order dismissing the complaint for failure to state a claim on which relief could be granted. On August 19, 1980 petitioner served a cross motion for a preliminary injunction. Both motions were denied by the Court.

On November 24, 1981 petitioner's action was ordered stayed pending completion of the arbitration proceedings brought under the provisions of the collective bargaining contract governing the faculty of the City University of New York. The case was subsequently placed on the trial calendar of Abraham J. Sofaer, D.J., S.D.N.Y. A trial commenced

on January 31, 1984. Defendants moved for a directed verdict and for an order dismissing Dr. Akerman's complaint and granting judgment for defendants. The Court granted this motion and issued a Memorandum and Order to this effect on February 7, 1984. A copy of this Memorandum and Order is attached as Appendix A8-15.

Petitioner filed a timely notice of appeal on March 1, 1984. Petitioner submitted her appeal brief and appeared pro se in her appeal to the United States Court of Appeals for the Second Circuit. On October 17th, 1984 a three judge panel of the Court of Appeals affirmed the judgment of the District Court. A petition for rehearing with a suggestion that the action be reheard en banc was subsequently filed by petitioner. On March 5, 1985 the United States Court

of Appeals for the Second Circuit issued an order denying the petition. Dr. Akerman now seeks a writ of certiorari from the United States Supreme Court and prays that the Court grant her petition.

REASONS FOR GRANTING THE WRIT

The denial of tenure to the petitioner was in violation of her rights of free speech and association protected by the First and Fourteenth Amendments of the United States Constitution and by 42 U.S.C. §1983.

The denial of tenure to petitioner was not based on valid academic or institutional considerations. In fact, neither her department nor the college or university ever provided a valid academic or institutional justification for the denial of tenure. Rather the negative decision was the result of a pattern of

political bias, harassment, personal animosity, and procedural violations which interfered with Dr. Akerman's First and Fourteenth Amendment rights and with her federally protected statutory rights under 42 U.S.C. §1983. In considering petitioner's constitutional and statutory claims, the lower federal courts erred in applying the appropriate legal standards to her claims.

Petitioner's First and Fourteenth Amendment rights of freedom of speech and association were violated because the respondents' denial of tenure was substantially influenced by her association with Radio Free Europe ("RFE"). Between 1968 and 1973 Dr. Akerman was employed by RFE. During this period she broadcast cultural programs concerned with French art and literature.

The issue of petitioner's association with RFE was raised at a key meeting of a subcomittee of the Hunter College Faculty Personnel and Budget Committee which was held on May 2, 1979. The subcommittee met with petitioner to consider her tenure appeal. A substantial portion of the meeting was devoted to questioning her about her affiliation with RFE and with her use of a pseudonym in that role. The questioning was conducted by Professor Alphonso Pinkney, an avowed and militant Marxist. She was literally cross-examined by Professor Pinkney in a manner which was both hostile in tone and substance. Pinkney strongly intimated that petitioner was a dangerous right-winger and possibly an agent of the Central Intelligence Agency. Two of the many questions which he put to the

petitioner were: "What were you doing at Radio Free Europe anyhow?" and "Why did you use a pseudonym when you worked for Radio Free Europe?"[2]

It is well established that a public employee may not be discharged from employment or denied tenure for engaging in constitutionally protected conduct. Pickering v. Board of Education, 391 U.S. 563 (1968); Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972); Givhan v. Western Line Consolidated School District, 439 U.S. 410 (1979); Mt. Healthy City School District v. Doyle, 429 U.S. 274 (1977);

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2 Petitioner and her husband are refugees from political repression in their native Romania. Her experiences under both Nazi and Communist rule have left her with a strong dislike of both political philosophies. But her primary interests are in French literature and culture and not politics.

Seltzer v. Berkowitz, 459 F.Supp. (E.D.N.Y. 1978); vacated and remanded on other grounds, sub nom Seltzer v. Fleisher, 629 F.2d 809 (2nd Cir. 1980), cert. den. 451 U.S. 970 (1981).

Petitioner's employment by RFE is clearly protected by her First and Fourteenth Amendment freedoms. Healy v. James, 408 U.S. 169 (1972). "Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the First Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition." Healy v. James, supra at 181. In Seltzer v. Berkowitz, supra, it was held that the denial of tenure to a professor at the City University of New York because of his

association with the CIA constituted an interference with his First and Fourteenth Amendment rights.[3]

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3. In an article published by TIME magazine on Education under the title "Stormy Weather in Academe" (January 14, 1985), the author deplores that a young scholar from Princeton, David Abraham, disliked by one or two colleagues for holding Marxist opinions, is the occasion for "powerful tenured scholars to come down on a young man at the most vulnerable point in his career." The adversaries of the Princeton Marxist scholar and historian wrote to the Catholic University in Washington, where Abraham was under consideration for hiring and the job evaporated." Abraham lost another opportunity, at the University of California, Santa Cruz, also, after the "intervention" of his colleagues. Dr. Akerman, who is considered "among the best" in her field of expertise in XVIIth Century French literature, has tried for six consecutive years, since her brutal and unexplained dismissal from Hunter College because of her political beliefs, to secure another position which would allow her to support herself with dignity.

In Mt. Healthy, supra, the Supreme Court set forth the test for determining whether an employee has been discharged or denied a benefit of employment for a reason which infringes upon constitutionally protected rights: 1) whether a constitutionally protected right was involved; and 2) whether the protected right constituted a motivating factor in the negative personnel decision. The public employee need not show that the impermissible reason was the sole basis for the decision; only that it was one factor in discharging an individual or denying a benefit.

Petitioner has clearly satisfied both prongs of the Mt. Healthy test. Her relationship with RFE is a constitutionally protected form of association. The decision of the subcommittee of the Hunter College Faculty and Personnel

Budget Committee to deny petitioner tenure was tainted by the illegal questioning about her association with RFE.[4] It also corrupted the final decision of the Faculty Personnel and Budget Committee, many of whom were also members of the subcommittee, and of the then President of the College, Jacqueline Wexler, who attended and participated in all Faculty Personnel and Budget Committee meetings.

Dr. Akerman was also denied tenure at Hunter College because of her association with one member of the Romance Languages Department, Professor Alex Szogyi. Petitioner was hired by Szogyi and was generally viewed as his

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4 The District Court Judge dismissed the questioning as unimportant because petitioner's department had already voted to deny her tenure. In March of 1979, the department had, in fact, voted to grant her tenure.

protege. During the term of petitioner's employment at Hunter College a power struggle grew between Szogyi and other professors in the Department who sought to oust him as departmental chairman. The denial of tenure to Akerman was substantially motivated by her association with Szogyi; she became an innocent victim of the intramural conflict within the Romance Languages Department which raged for a number of years and which was widely known throughout the college.

The memorandum signed by Judge Sofaer (Appendix A8-15) accepts that President Wexler was speaking of tenure in general. But the witnesses she addressed testified that they came to her office to discuss Dr. Akerman, specifically. And the former President of Hunter College said, "She won't be

able physically and psychologically to teach for another fifteen years." Dr. Akerman was, at that time, only forty-five years old.

The French Department was not overtenured as alleged, since two full-time teachers have been hired since Dr. Akerman was gotten rid of. One was hired in 1981 and another in 1984. Dr. Akerman had applied for each of the positions when they were advertised in The New York Times. However, these applications were to no avail in spite of her superior academic qualifications.

Former President Wexler held in high regard Professor Caws whose husband was among those responsible for her securing the position of President of the College. She made no secret of this tie. Additionally, Professor Caws wrote incessant letters to the former Provost

and the former Dean, her personal friends, against Dr. Akerman.

Again, His Honor, Judge Sofaer, chose to believe that Dr. Akerman had not been a member of the Curriculum Committee. Although Dr. Akerman had devised multiple courses and syllabi which secured high enrollments for the Department, and were widely used by the members of the same Department. This all took place long before Dr. Hortas had been nominated by former President Wexler, in order to replace the former chairman, Professor Szogyi. The day the Department was due to vote on Dr. Akerman's C.C.E., the former President personally endeavored to forcefully remove Professor Szogyi from the Personnel and Budget Committee, so that he could not help Dr. Akerman.

Dr. Hortas asserted that Dr. Akerman's teaching abilities were not in question. What was the true reason for her dismissal, since her scholarship, high enrollments, useful extracurricular activities and excellent rapport with the students in toto were also not in question? The protest of an overtenured Department in French was blatantly fallacious, since members were retiring when Dr. Akerman was dismissed, and in her stead, former President Kneller of Brooklyn, was brought in immediately. It was another personal friend of Wexler and the one responsible for Dr. Seltzer's dismissal as a "tool of the CIA." Obviously, politics at large and those of the Department and College with typical arbitrary connotations, explain the unexplained.

Petitioner's association with Professor Szogyi is protected by the First and Fourteenth Amendments to the Constitution. The freedom of association is not restricted to relationships premised on political or economic beliefs, so-called "instrumental" forms of association. Constitutional protection has also been extended to modes of association pertaining to the social and economic benefit of members of organizations. United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971) and United Mine Workers v. Illinois State Bar Association, 389 U.S. 217 (1967). It has also been extended to a wide variety of other close personal relationships which the Supreme Court has referred to as "intrinsic" forms of associational liberties. Roberts v. United States Jaycees, 104 S.Ct. 3244

(1984). Intrinsic associations are characterized by smallness of number, selectivity, congeniality, and mutuality of purpose. Petitioner's relationship with Professor Szogyi was characterized by these qualities and is, therefore, deserving of protection under the First and Fourteenth Amendments.

The Court of Appeals erred when it affirmed the District Court's dismissal of petitioner's suit under 42 U.S.C. §1983 on the ground that it was legally bound to give binding effect to the decision of the labor arbitrator in the collective bargaining grievance which preceded this action.

In McDonald v. City of West Branch, Michigan, 104 S.Ct. 1799 (1984), the United States Supreme Court held that in actions brought under 42 U.S.C. §1983, the federal courts should not accept as

binding arbitration awards in collective bargaining disputes. The Supreme Court declared that while "arbitration is well suited to resolving contractual disputes...it cannot provide an adequate substitution for a judicial proceeding in protecting the federal statutory and constitutional rights that Sec. 1983 is designed to safeguard."

Further, the lower federal court's acceptance of the arbitration decision was especially prejudicial to a consideration of petitioner's rights because it was based solely on the final year of Dr. Akerman's employment at Hunter College. The Arbitrator strictly enforced the terms of a 1978 settlement agreement between the petitioner and the university which provided for reappointment for an additional year, but which also declared that "no further

grievances, administrative proceedings or court actions...will be initiated by or on behalf of AKERMAN related to her employment prior to the date of this agreement."

The federal courts should not be restricted by the terms of private settlement. Because of the fundamental importance of the rights protected by Sec. 1983, the federal courts should give full consideration to all relevant facts concerning this legal action. McDonald, supra.

The decision of the federal district court dismissing petitioner's cause of action preceded by several months the decision of the United States Supreme Court in the McDonald case. Without the benefit of this ruling the district court judge could not properly apply the correct legal rules to Dr. Akerman's

claims. Further, the Court of Appeals for the Second Circuit erred when it failed to recognize the validity of petitioner's argument in respect to the proper consideration to be given to an arbitration award in a law suit based on Sec. 1983 claim.

Indeed, on February 1, 1984, toward the end of the trial, His Honor, Judge Sofaer, had remarked, "Let the gentlemen of the Supreme Court take care of it." (He was alluding to the intricate hate, revenge, and obvious inequities of academic life with which he is acquainted, but which do not seem to be accurately taken care of in the narrower context of a District Court).

CONCLUSION

For the foregoing reasons, petitioner, Simone Akerman, respectfully requests that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

Simone Akerman
61-45 98th Street
Rego Park, NY 11374
(718) 592-6743

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventeenth day of October one thousand nine hundred and eighty-four.

P r e s e n t:

HONORABLE THOMAS J. MESKILL,
HONORABLE LAWRENCE W. PIERCE,
Circuit Judges,
HONORABLE MILTON POLLACK,
District Judge.*

DR. SIMONE AKERMAN,	:	
	:	
Plaintiff-Appellant.	:	
v.	:	Docket No.
BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, HUNTER COLLEGE OF THE CITY UNIVERSITY OF NEW YORK, and JACQUELINE WEXLER,	:	84-7202
	:	
Defendants-Appellees	:	

* Honorable Milton Pollack, United States District Judge for the Southern District of New York, sitting by designation.

Dr. Simone Akerman, pro se, appeals from a judgment of the United States District Court for the Southern District of New York, Sofaer, J., granting defendants' motion for judgment at the end of Akerman's case and dismissing her action filed pursuant to 42 U.S.C. § 1983 (1982).

This cause came on to be heard on the transcript of record from said district court and was argued by appellant pro se. The appellees did not argue and submitted their argument in a written memorandum dated June 5, 1984.

The judgment of the district court is AFFIRMED.

Akerman was employed by Hunter College as a full time instructor under a series of six successive one year employment contracts, after which she was

denied reappointment for the 1977-1978 academic year with a certificate of continuing employment (CCE).

Akerman filed a grievance, pursuant to the collective bargaining agreement, alleging procedural irregularities in denying her a CCE. After her grievance was denied at step one, a settlement was reached which provided that she would be reappointed for the 1977-1978 year without a CCE for the purpose of further evaluation.

The following year Akerman's status was again considered and she was again denied a CCE. Subsequently, Akerman learned that the member of the interviewing subcommittee who questioned her about her earlier work for Radio Free Europe was a Marxist.

On April 4, 1980 Akerman commenced this action alleging that (1) she was denied a CCE because of her association with Radio Free Europe, in violation of her First Amendment rights; (2) she was denied a CCE because of her association with Dr. Szogyi, in violation of her First Amendment rights; (3) she was denied a liberty interest without due process because she was called psychologically unfit to teach by President Wexler and was called a liar by another member of the department, Professor Caws, without being afforded an adequate opportunity to clear her name; and (4) the above resulted in her being deprived of substantive due process.

Judge Sofaer's findings of fact are not clearly erroneous and his conclusion that Akerman had failed to prove her

allegations by a fair preponderance of the evidence is supported by the record.

We affirm substantially for the reasons set out by Judge Sofaer in his Memorandum of Decision dated February 7, 1984.

/s/
Thomas J. Meskill, U.S.C.J.

/s/
Lawrence W. Pierce, U.S.C.J.

/s/
Milton Pollack, U.S.D.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 5th day of March one thousand nine hundred and eighty-five.

DR. SIMONE AKERMAN, Plaintiff-Appellant. v. BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, HUNTER COLLEGE OF THE CITY UNIVERSITY OF NEW YORK, and JACQUELINE WEXLER, Defendants-Appellees	Docket No. 84-7202

A petition for rehearsing containing a suggestion that the actiсn be reheard in banc having been tiled herein by Dr. Simone Akerman, appellant pro-se,

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

Elaine B. Goldsmith
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. SIMONE AKERMAN, Plaintiff, v. BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, HUNTER COLLEGE OF THE CITY UNIVERSITY OF NEW YORK, and JACQUELINE WEXLER, Defendants.	MEMORANDUM AND ORDER 80 Civ. 1884 [sic] ADS

ABRAHM D. SOFAER, D.J.:

The plaintiff having completed presenting her case, and defendants having moved for judgment at the end of the plaintiff's case, the defendants' motion is hereby granted on the basis of the following findings and conclusions. Plaintiff advances four claims: (1) that she was denied a Certificate of Continuing Employment (CCE) because of

her association with Radio Free Europe, which would violate her first amendment rights; (2) that she was denied a CCE because she was part of the so-called Szogyi faction in the Department of Romance Languages; (3) that she was denied a liberty interest without due process in that she was called psychologically unfit to teach by President Wexler, and was called a liar by her colleague Professor Caws, and afforded no adequate opportunity to clear her name; and (4) that the aforesaid deprivations resulted in her being deprived of "substantive" due process.

The plaintiff failed to establish by a preponderance of the evidence that her association with Radio Free Europe, or her relationship with Dr. Szogyi, had any bearing on her being denied a CCE. The

evidence overwhelmingly proves she was denied a CCE by the Department P & B Committee, and by the University P & B Committee, because of their agreement with Dr. Hortas that the Department was overloaded with tenured people, particularly in French Literature, which was plaintiff's area of expertise, and that the Department should have some degree of flexibility in future hiring, so that it could fulfill its responsibilities to teach language, and to teach more Spanish if the demand for courses in that language continued to increase. Some questions concerning plaintiff's association with Radio Free Europe were asked at the University P & B level, but even if the questioner was influenced by this association his vote and opinion had no influence on the

result; as plaintiff contends, the result was largely a foregone conclusion once plaintiff was denied a CCE in the Departmental P & B (by a tie vote), where her association with Radio Free Europe was not discussed at all and played no part in the decision. In reaching these findings the Court has considered the evidence introduced at trial, including the evidence and findings of the able and experienced arbitrator, as authorized by Alexander v. Gardner-Denver Co., 415 U.S. 36, 59-60 (1974). The City may well be correct that the arbitrator's specific findings on this issue must be accepted in light of Migra v. Warren City School District Board, 52 U.S. Law Week 4151 (Jan. 23, 1984), since New York apparently grants res judicata effect to such findings, see American Insurance Co.

v. Messinger, 43 N.Y.2d 184, 190, 371 N.E.2d 798 (1977); Rembrandt Ind.[sic] v. Hodges Int., Inc., 38 N.Y.2d 502, 344 N.E.2d 383 (1976). But even if the Court were free to reach another conclusion it would not do so.

Plaintiff's claim based on her association with Dr. Szogyi is legally insufficient, and in any event unproven. No constitutional interest is infringed when one "clique" in a department gangs up to deny tenure to a member of another "clique". This pathological conduct, unfortunately common perhaps especially in humanities departments, is not subject to constitutional control unless it results in the deprivation of some procedural right. See, e.g., Jones v. Kneller, 482 F.Supp. 204 (E.D.N.Y. 1979), aff'd. no opinion 633 F.2d 204 (2d Cir.)

cert. denied, 449 U.S. 920 (1980).

The fact is, however, that while professor Caws seems to have been unfair and irrational in her appraisals of plaintiff, the Romance Languages P & B - the only one on which Caws voted - voted 3 to 2 in favor of granting plaintiff a CCE; Dr. Hortas, who cast the other negative vote, was not motivated by any malice against plaintiff and gave no weight to - and did not share - Dr. Caw's appraisal of plaintiff's teaching ability.

Plaintiffs third claim also fails because of the specific, well supported findings of the arbitrator, either because they must be deferred to or because this Court accepts them as the most likely version of what happened. President Wexler no doubt stated that

candidates for tenure are sometimes unfit to teach for their full careers, but she did so in making the point that tenure should not be given lightly. Her letter to plaintiff at about the same period that she made this statement expressly relates her belief that the Romance Languages Department was over-tenured. The statement in any event had no bearing on plaintiff's employment at Hunter, which was terminated by decisions taken one year later, and the arbitration provided an ample opportunity for plaintiff to rebut the alleged statement. As for the notation by Caws, the same consideration noted above are apposite; furthermore it played no part in the employment decision, and plaintiff's proof at the trial ended without plaintiff having established that she was

in fact elected to serve on the curriculum committee. The substantive due process claim fails because it is based wholly on the other alleged violations.

The Clerk will enter judgment for defendants dismissing plaintiffs' complaint with prejudice and costs. F.R.C.P. 52,58.

SO ORDERED.

Dated: New York, New York
February 7, 1984

/s/
ABRAHAM D. SOFAER, U.S.D.J.